

Minutes of the Board of Adjustment meeting held on Monday, July 12, 2010, at 5:30 p.m. in the Murray City Municipal Council Chambers, 5025 South State Street, Murray, Utah.

Present: Joyce McStotts, Chair
Jonathan Russell, Vice-Chair
Rosi Haidenthaller
Roger Ishino
Preston Olsen
Ray Christensen, Senior Planner
Tim Tingey, Community & Economic Development Director
G.L. Critchfield
Citizens

There was a staff review meeting held where the Board of Adjustment members briefly reviewed the applications. An audio recording is available for review in the Community & Economic Development office.

Ms. McStotts explained that variance requests are reviewed on their own merit and must be based on some type of hardship or unusual circumstance for the property and is based on state outlined criteria, and that financial issues are not considered a hardship.

APPROVAL OF MINUTES

Rosi Haidenthaller made a motion to approve the minutes from June 14 2010 as written. Roger Ishino seconded the motion.

Call vote recorded by Ray Christensen.

A Ms. McStotts
A Mr. Olsen
A Mr. Ishino
A Mr. Russell
A Ms. Haidenthaller

Motion passed 5-0.

CONFLICT OF INTEREST

There were no conflicts of interest pertaining to these agenda items.

CASE #1410 – D M KIMBALL, LLC – 171 East 5300 South, Project #10-165

David Kimball was the applicant present to represent this request. Tim Tingey reviewed the location and request for a height variance of up to 12 feet 10 inches to allow for construction of a hotel on the property addressed 155 & 185 East 5300 South. Murray City Code Section 17.160.060 limits the height of a structure in the C-D-C zone to 35 feet within 100 feet of a residential zoning district. Beyond 100 feet the building height may increase one foot of height for every four feet of additional setback from the residential zone. The applicant originally submitted a request for a variance of approximately 40 feet in order to construct the proposed hotel. City staff has worked with the applicant in order to modify the plan to reduce the overall height of the building and the total requested variance. The applicant has removed a portion of the upper floor closest to the residential zoning in order to reduce the variance request and to mitigate impacts to the residentially zoned properties. The ordinance allows for a building height

of 35 feet within 100 feet of a residential zone with a 1:4 building height to setback ratio beyond 100 feet. The variance request of 12 feet 10 inches is based on the permitted height at the south side of the building. As illustrated in the drawings submitted by the applicant, as the distance from the residential zoning to the south increases, the permitted height also increases. The submitted elevation drawings illustrate the permitted height compared to the increase in setback with dotted lines indicating the permitted height on the south side of the building and the north side of the property. As shown on the drawings, the proposed hotel is less than the allowable height on the north side of the building. Additionally, the west side of the building has a large unoccupied mechanical room/sign parapet that is exempt from the height requirements of ordinance. The applicant has modified the plans considerably in order to meet the setback and height regulations. Literal enforcement of the ordinance would mean that the applicant could not complete a portion of the south side of a building that otherwise meets the height requirements of the ordinance. Approval of a variance would allow for a logical and reasonable extension of the upper floor. Not allowing the applicant to complete a logical extension of the remaining area of the upper floor would constitute a hardship that is not necessary to carry out the intent of the ordinance. The topography and size of the lot have limited the placement of the building. There are differences in grade from the south-west to the north-east corner and the width is also very narrow constituting special circumstances related to this property that generally do not apply to other properties. The building has been placed as far to the north as possible based on building code requirements for building openings adjacent to property lines. Based on review and analysis of the application material, subject site and surrounding area, the applicable Murray City Municipal Code sections, Mr. Tingey indicated that the proposal meets the standards for a variance and staff recommends approval.

Rosi Haidenthaller asked if the variance were to be granted, what is the process for this project. Mr. Tingey responded that a lot depends on the applicant, but what needs to occur is a rezone of property and a site plan review process for consideration of the site and the land use for the hotel development. The rezone would be from open space to commercial for the portion of property currently owned by Salt Lake County.

David Kimball, 1000 South Main Street, Salt Lake City, stated he is the owner of the project. Mr. Kimball stated when he purchased the property over two years ago; it was at the height of the real estate market. Today, it is difficult to develop with the financial industry as it is, even with a hotel. He stated they feel strongly that Murray is a gateway and 5300 South specifically is a great exit area from I-15. This site would accommodate a 125-room Residence Inn because of the open space and is somewhat off the beaten path. The main generator for the hotel would be the new Intermountain Medical Center and there has been a lot of input from the hospital desiring a hotel in close vicinity. He stated they are sensitive to the residential area. He stated they have worked closely with city staff to have a project that is feasible, but if there is a lot of opposition they probably will not build the hotel. He stated he does not wish to be an adverse developer if it is not needed or desired by the community. The residential area across the street to the south is being acquired by the school district for a school parking lot expansion and they feel there aren't any residential homes that would be affected with this development. It will have a strong visual impact and will increase a good base for the city and county. He stated they still need to acquire portions of property and have entered into a contract with Salt Lake County to purchase portions of property in exchange for new bleachers, restrooms and a parking lot on the county property. He stated there are still issues to be overcome prior to this project happening. He stated the

benefit to the county is there would be no out of pocket expenses for their improvements. He commented that security is always an issue for hotels and they are very security conscientious and intend to have various forms of security.

Rosi Haidenthaller stated this is to be a Residence Inn as opposed to a regular Marriott Hotel and asked how it would affect the traffic patterns for this type of facility. Mr. Kimball responded that generally Residence Inn's are extended stay hotels with a typical stay being 4-7 days. Typically only 60% of the parking is actually needed for a Residence Inn, but may be a little different because of the hospital. He stated they looked at the Mayo Clinic Residence Inn in Arizona where they use around 60% of the parking. There will be very little impact on traffic because they will utilize the main access from Parkway Lane. He stated they have downscaled their plans from 130 suites to a 125 room hotel and if they further reduce the number of rooms, it will not work financially.

Jonathan Russell stated this proposal will greatly enhance the area. He stated that he lives off 5300 South and feels the traffic is already an issue, but this proposal will not add additional traffic congestion as proposed. Mr. Kimball stated the hospital wanted this hotel to be a full-service hotel, but the costs and expense to operate those types of hotels is cost prohibitive. He stated that hotels that generate a lot of traffic have larger rooms for conventions and it isn't the rooms that generate the traffic.

Roger Ishino asked the projected opening date for the hotel. Mr. Kimball responded the earliest date would be in the spring of 2012. He stated that hotels are a clean business and bring in people that spend money and create local jobs.

This agenda item was opened for public comment.

Jim Towers, 246 East 5300 South, asked the Board of Adjustment members to deny this variance request of 12 feet. He stated he has lived in this area of Murray his whole life along with other siblings and extended family plus they have had businesses also located in Murray City since 1942. At a young age he was taught to respect "the good of the whole". Over the past few years there have been many changes to this neighborhood and these changes have affected many of their neighbors being uprooted and dissipated. He has been saddened with the changes but they have felt those changes to this point have been for the benefit of the community, but this change is not for the benefit of the community and is one of financial gain for one corporation. He stated that after reviewing the city's code 22 years ago his company built a new building on State Street which met that code. He stated the nature of his contracting business forces him to comply with city, state and federal regulations on a daily basis. An additional 12 feet 10 inches doesn't sound like a big deal, but when you add this to the established code allowance, it is a big deal and will negatively impact the neighborhood and could meet the difference of a potential hotel guest looking into his yard or another neighbor's yard. This proposed hotel will stand out like a sore thumb compared to the neighborhood. If built as proposed, it will be double the height of the property at Gary Howland's four-story building a few hundred feet away. He stated that the task of the Board of Adjustment members is not an easy one and asked the Board if they would like to have this structure across the street from their homes. He encouraged the Board members to deny this variance request and maintain the integrity of the existing neighborhood and "the good of the whole".

Ryan Butters, 5308 South Alpine Drive, stated he is a resident of one year to this area. He stated he would not have purchased his home had he known this hotel may be built. He stated where he grew up, his high school was adjacent to a hotel where one of his friends was raped and other friends became drug addicts due to the activities that

occurred at the hotel. He asked the Board members to consider the long term impacts and things that occur with a hotel.

Nate Porter, 97 Princeton Drive, Midvale, stated he owns the business known as the Huka Bar located on 6100 South. Mr. Porter stated as a night club owner they work a lot with hotels in the area and he is in support of a high class extended stay hotel being located in Murray and it would help the hospital patrons. He stated they get a lot of traffic and tourists each year and it would be nice to have a close hotel in Murray City.

Colleen Ogrin, 269 East 5300 South, stated she is the first house adjacent to the property in question. She stated the only thing between her and the hotel is a large open parking lot. She expressed concern with the proposed height and stated her opposition due to the lack of privacy and hotel patrons being able to look into her backyard or into her home. This building would also block the view of the Ice Center and access to the athletic fields. She stated that when the Point at 53rd Development was constructed the view of the Ice Center was blocked. She stated she is opposed to the height variance based on the above concerns. She stated that this is already a traffic congested area.

The public portion for this agenda item was closed.

Rosi Haidenthaller stated a few years ago the Board approved a height variance for the Olympus Ranch, a senior retirement community, and she lives in this area. At that time she was very concerned with the height of that structure and additional traffic. But, as the process transpired and is now a functioning use, it is a very good neighbor. She stated that sometimes the fear of the unknown for these types of proposals actually turn out to be good neighbors and are an asset to the community.

Preston Olsen asked for further explanation as to why staff feels this is a unique property for granting a variance. Tim Tingey responded in the C-D-C district, the majority of properties have much greater depth from the right-of-way to the back of the property. This property is very narrow, which is unique. The second issue is the topography of the property wherein the grade changes substantially and from the east to the west. Based on those two reasons, there are unique circumstances related to this property.

Joyce McStotts expressed concern with a hotel being so close to a high school and middle school. She stated that the Board cannot address financial issues with regards to granting a variance. She stated that the issue of one floor of the hotel being taken down and if additional space is lost, it would not be a financially feasible project and cannot be considered as a valid reason for approving a variance. Mr. Tingey stated that the literal enforcement of the land use ordinance would cause an unreasonable hardship for the applicant and is not necessary to carry out the general purpose of the general plan. He stated that this application does adhere to this standard and the reasoning for that is primarily because this use is allowed in the zoning district. The height standards, particularly on the north side, meet that standard. There is a change in grade towards the south of the property and is where the variance is being requested. The planning staff feels that not allowing the applicant to complete this logical extension of what is allowed from the north moving to the south, would constitute a hardship. The staff feels this application meets the variance standards based on the issues presented.

Rosi Haidenthaller indicated in the variance findings, it states that the applicant has removed more than half of the highest floor and has moved the building as far to the north as possible in an attempt to meet the building codes, and the applicants have made reasonable efforts to comply with the codes.

Jonathan Russell stated he is really conscientious about what goes on in Murray City and desires to have nice improvements. He stated that the Marriott Residence Inn's are quality projects. He stated that he feels this proposal is far enough away from the neighborhood that he does not have a concern about the proposed height of 12 feet 10 inches. Based on the criteria for granting a variance, he feels this project meets that criteria and is reasonable. The grade and the width of the property is a hardship for the commercial property and the applicants have moved the structure as far to the west and north as possible. He stated that he feels this proposal would make a good neighbor.

Jonathan Russell made a motion to grant the variance based on the criteria presented regarding the change in grade and narrow width of the property as being a hardship. Seconded by Rosi Haidenthaller.

Call vote recorded by Ray Christensen.

A Ms. McStotts

N Mr. Olsen

A Mr. Ishino

A Mr. Russell

A Ms. Haidenthaller

Motion passed 4-1.

Rosi Haidenthaller made a motion to approve the Findings of Fact as outlined by staff. Seconded by Roger Ishino.

A voice vote was made. The motion passed 4-1.

CASE #1411 – HUKA INTERNET CAFÉ & JUICE BAR – 139 East 6100 South, Project #10-170

Nate Porter was the applicant present to represent this request. Ray Christensen reviewed the location and request to not install the 10 ft. depth of landscaping at the street frontage at the property addressed 139 East 6100 South. The site is currently nonconforming regarding compliance to the landscaping requirement. The landscaping variance relates to a change of use on the property to an internet café and juice bar which requires a Conditional Use Permit and the site standards must be brought into compliance as part of the permit. Murray City Code Section 17.160.100. A. states that a ten foot depth of landscaping is required along all frontage areas not occupied by drive accesses. Landscaping adjacent to off street parking within the yard area will require a minimum landscaped area of five feet providing it does not abut residential zoning. There is currently about a 3 foot depth of frontage landscaping. The applicants are also requesting a variance to not install the required 5 foot depth of landscaping adjoining the parking stalls at the north east side of the property. The applicant is in the process of obtaining an agreement for use of additional parking stalls in this area. Municipal Ordinance 17.72.020C outlines alternatives to on site parking and states the following: Parking may be approved on other property not more than 200 ft. from the parcel of land to be served. Hard surfacing, protective curbs, landscaping, fencing, and illumination are required as approved by the Planning Commission and Conditional Use Permit approval. The applicants will need additional parking stalls for the proposed business use even if a variance is granted for the landscaping which only affects 2 parking stalls.

Based on review and analysis of the application materials, subject site and surrounding area, and applicable Murray Municipal Code sections, the Community and Economic Development Staff finds that the proposal does not meet the standards for a variance. Therefore, Mr. Christensen stated that staff recommends denial.

Joyce McStotts asked which parking stalls would be lost in order to install the landscaping. Mr. Christensen responded the parking stalls to the north-east corner of the property and directly behind the sidewalk to the south.

Nate Porter, 97 Princeton Drive, Midvale, stated he is one of the owners of the Huka Bar & Grill for the past five years and is a successful night club in Murray. Mr. Porter stated this property was previously a dance studio but was vacant for the previous three years. This proposed business would be a non-alcoholic juice bar. This property has 9 parking stalls and has always had only 9 parking stalls. He stated the property doesn't have ideal landscaping and if they are required to install the landscaping to meet the city code, it would eliminate two parking stalls. He stated he has obtained a parking agreement from a neighbor for 14-16 parking stalls. He stated that the uses that could be located on this property would allow for a salon with one or two chairs and that retail space would not be possible. He commented that there is literally no business that is appropriate for this building given the amount of existing parking and any new business would need to obtain additional parking elsewhere. He stated that being required to install the landscaping would remove 25% of the stalls and creates a hardship for this property. He stated they are barely meeting the city's requirements for this business with regards to parking and having to eliminate two stalls in order to accommodate landscaping may make it impossible for their business to be approved. He stated that this property has large trees and bushes which help offset the visual perception for landscaping percentages.

Rosi Haidenthaller asked where the additional parking stalls are located for the parking agreement. Mr. Porter responded that they will provide free valet parking and that the Huka Bar is a high end night club.

Roger Ishino asked about the existing parking location for the Huka Bar. Mr. Porter responded that they do have a large parking lot with approximately 100 stalls behind the club and is currently being used and occasionally there is overflow parking with the valet parking service. He stated that they offer the free valet parking service so that they don't have parking problems.

The public comment portion for this agenda item was closed.

Jonathan Russell asked for clarification for available parking and hours of operation. Mr. Porter responded that the night club is open from 5 p.m. to 1 a.m. The Huka Bar & Grill also has a full-service restaurant and specializes in live bands. The proposed juice bar will be a non-alcoholic alternative to the night club and is a juice bar and internet café and hopefully will host business meetings and is an alternative for those who chose a nice atmosphere without being around alcohol. The new Juice Bar & Internet Café will be open until approximately 2 a.m. He stated their patrons may decide to go to the juice bar after the Huka Bar closes for an additional hour to continue to socialize with their friends and possibly sober up which is a form of public safety. The Juice Bar patrons will be able to watch the live bands from the Huka Bar via television. The Internet Café will open earlier in the daytime. The valet parking starts operating around 9 p.m. when the parking is heavily utilized. He stated that he has a rented parking stall agreement with an adjacent business. Mr. Porter stated the Huka Bar is open for lunch with a wide

variety of food options while the Internet Café will serve muffins and waffles during the day and in the evening the food is catered from the Bar to the Internet Café after 5 p.m.

Rosi Haidenthaller asked about the requirement for the 5 foot depth of landscaping between parking lots for commercial businesses, particularly when it is behind the buildings. Tim Tingey responded part of the reason for the landscaping requirement is to beautify areas and when there is a parking lot adjacent to another parking lot, the 5 foot strip of landscaping helps break it up and eliminates a "sea of parking". This is a requirement in commercial zoning districts. The other property that doesn't have that 5 foot landscaping strip is most likely a nonconforming situation to that requirement and this property is also nonconforming as well. However, the zoning ordinance requires when a Conditional Use Permit application is made, that the property be brought into compliance with the current site standards. The Juice Bar & Internet Café is a conditional use and therefore requires the property be brought up to code with the 5 foot landscaping strip to help break up the "sea of parking".

Tim Tingey explained that the Huka Internet Café & Juice Bar requires 46 total parking stalls and there are currently only 9 parking stalls on this site. There could be a variety of uses that may occupy this building. The code allows for agreements to occur within a 200 foot distance to allow for additional parking and the applicants have applied for that approval with the Planning Commission on July 15, 2010.

Preston Olsen made a motion that based on Findings of Fact that the variance be denied as outlined by staff. Jonathan Russell seconded the motion.

Call vote recorded by Ray Christensen.

A Ms. McStotts

A Mr. Olsen

A Mr. Ishino

A Mr. Russell

N Ms. Haidenthaller

Motion passed 4-1.

Preston Olsen made a motion to adopt the Findings of Fact. Seconded by Jonathan Russell.

A voice vote was made. The motion passed 5-0.

Meeting adjourned.

Tim Tingey
Director of Community & Economic Development